

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY GREGG, et al.,  
Plaintiffs,  
v.  
BOHEMIAN CLUB, et al.,  
Defendants.

Case No. 23-cv-02760-AMO

**ORDER RE FURTHER BRIEFING**

Re: Dkt. Nos. 34, 35

Before the Court are motions to dismiss filed by both Pomella LLC (ECF 34) and Bohemian Club (ECF 35). Plaintiffs failed to timely respond to the motions, a topic addressed through the Court's recent Order to Show Cause. *See* ECF 53. While the Court appreciates the candor of Plaintiffs' counsel in his acknowledgement of an erroneous and mistaken belief regarding due dates (ECF 54 and ECF 54-1),<sup>1</sup> the Court is disinclined to permit Plaintiffs to file a late opposition brief.

The Court generally finds Defendants' motions to dismiss meritorious. The remaining question is whether leave to amend should be granted. Federal Rule of Civil Procedure 15(a)(2) provides that the district court should "freely give leave when justice so requires" and "this policy is to be applied with extreme liberality." *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1160 (9th Cir. 2021) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)). "In determining whether leave to amend is appropriate, the district court considers the presence of any of four factors: bad faith, undue delay, prejudice to the opposing party, and/or

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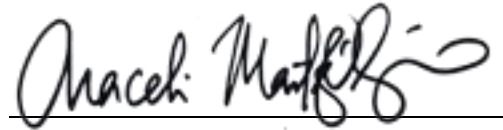
<sup>1</sup> Contrary to the Court's direction, ECF 53, Plaintiffs included argument and submitted evidence going to the merits of Defendants' motions. ECF 54 and ECF 54-1. Plaintiffs' inclusion of such argument and materials was specifically disallowed. Counsel is advised to heed the Court instructions or face monetary or other appropriate sanctions.

futility.” *Herring Networks*, 8 F.4th at 1161 (quoting *Owens*, 244 F.3d at 712). The last factor, futility, is the one most relevant here, and it has not been addressed in the briefs before the Court.

Accordingly, the Court hereby ORDERS further briefing addressing only whether it is possible for Plaintiffs to state claims against these two Defendants if granted leave to amend or whether amendment would prove futile. Plaintiffs must file a brief of not more than three pages addressing this issue on or before November 15, 2023. Defendants Pomella LLC and Bohemian Club may file responsive briefs of not more than three pages each on or before November 29, 2023.

**IT IS SO ORDERED.**

Dated: November 1, 2023



ARACELI MARTÍNEZ-OLGUÍN  
United States District Judge